

SBCivil Writ Petition No.2292/2003

Bhanwarlal
V.
Commissioner, Command Area Development, IGNP, Bikaner
and others.

Date of Order :: 3rd July, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. D.K.Parihar, for the petitioner.
Mr. Shyam Ladreacha, Addl.Govt.Advocate.

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By this petition for writ a challenge is given to the award dated 21.8.2002 passed by Labour Court, Sriganganagar in Industrial Dispute Case No.32/2001.

In brief, the facts of the case are that appropriate government by its notification dated 28.5.2001 referred an industrial dispute for its adjudication to Labour Court, Sriganganagar in following terms:-

“क्या सेवानिवृत्त कर्मचारी भंवरलाल गोयल पुत्र श्री श्योजीराम गोयल को अप्रार्थी आयुक्त सिंचित क्षेत्र विकास इन्द्रा गांधी नहर परियोजना बीकानेर द्वारा पार्ट सैकिण्ड में वर्णित स्वीकृत आकस्मिक अवकाश व राजकीय अवकाशों का बकाया वेतन 1,28,782 रुपये 79 पैसे नहीं देना उचित एवं वैध है ? यदि नहीं तो कर्मचारी किस राहत का अधिकारी है?”

The Labour Court by award impugned refused to adjudicate the dispute being not having jurisdiction in light of Section 10 of the Rajasthan Civil Services (Service Matters Appellate Tribunals) Act, 1976 (hereinafter referred to as "the Act of 1976"). Being aggrieved by the same, this writ petition for writ is preferred.

while giving challenge to the award impugned it is contended by counsel for the petitioner that:-

(1)the dispute referred to the Labour Court, Sriganganagar by appropriate government for its reference is not a service matter as defined under Section 2(f) of the Act of 1976, therefore, the Labour Court erred while not adjudicating the dispute in light of Section 10 of the Act of 1976;

(2)under Section 4 of the Act of 1976 the remedy available to a government servant is against an order pertaining to service matter as defined under the Act of 1976 but in the present case there was no order, therefore, remedy of appeal prescribed under Section 4 of the Act of 1976 is not available to the workman. As such, the Act of 1976 is having no application; and

(3)without prejudice to above, the petitioner was workman and the respondent department being an industry are governed by the Industrial Disputes Act, 1947 also and that being a special legislation the dispute should have been entertained.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner is not entitled for the amount as claimed by him under the dispute. Nothing has been said by the respondents in reply to the writ petition as to whether the Labour Court was having jurisdiction to adjudicate the industrial dispute referred to it by appropriate government. Be that as it may, the issues raised in the instant petition for writ are purely legal, therefore, no reply of the respondents on facts is even required.

Heard counsel for the parties.

The petitioner claimed a sum of Rs.1,28,782.79 from the respondents and for that purpose an industrial dispute was raised by him and the same was referred for its adjudication by the appropriate government. The Act of 1976 was enacted by the State Legislature with an object to decide service matters other than the disciplinary proceedings expeditiously. Section 10 of the Act of 1976 bars the jurisdiction of civil courts to institute suit or other proceedings with regard to service matters. The term "Servicematter" is defined under Section 2(f) (as existing on 28.5.2001, the day on which reference was made) of the Act of 1976 that reads as under:-

“2(f)”Servicematter” means any one or more than one of the following matters relating to a Government servant.--

- (i)Seniority;
- (ii)Promotion;
- (iii)Confirmation;
- (iv)Fixation of Pay;
- (v)An order denying of varying pay, allowances, pension and other service conditions to the disadvantage of a Government Servant, otherwise than as a penalty;
- (vi)Cases of revision while officiating in a higher service, grade or post to lower service, grade or post otherwise than as a penalty;
- (vii)Withholding the pension or denying the maximum pension otherwise as the penalty;
- (viii)Any other notified by the Government.”

The petitioner claimed a sum of Rs.1,28,782.79 against earned leaves. From perusal of definition of “servicematter” as referred above it is apparent that it does not include the dispute with regard to non payment of amount pertaining to earned leave such as casual leaves and other government holidays. Beside the above, the remedy provided under section 4 of the Act of 1976 is of an appeal against the order passed by any officer or authority on any service matter or matters effecting a government servant in his personal capacity.

In the instant matter there was no order passed by any officer for not making payment of the sum claimed by the petitioner. As such, the remedy under Section 4 of the Act of 1976 is not at all available to the petitioner.

In view of the position as considered above, the Act of 1976 is having no application in present controversy and, therefore, the Labour Court wrongly refused to adjudicate the dispute referred to it.

Accordingly, this petition for writ is allowed. The award impugned dated 21.8.2002 passed by Labour Court, Sriganaganagar is quashed and the matter is remanded to the Labour Court, Sriganaganagar for adjudication of the dispute referred to it by appropriate government under notification dated 28.5.2001 afresh on merits.

(GOVIND MATHUR),J.

kkm/ps.